

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order of the Administrative Law Judge should be affirmed. Claimant testified he injured himself when he fell while going up a step. The fall caused him to hit the back of his hand on a piece of rebar. Respondent has presented eyewitness testimony indicating that the injury occurred in the course of an altercation between the claimant and a coworker under circumstances which would not be compensable. The testimony of the eyewitness is corroborated by the testimony of one of the principals of the respondent construction company who testified to his understanding that the injury occurred in the course of an altercation.

The Administrative Law Judge who heard the live testimony of these witnesses did not find claimant's version of the events credible and relied upon the version of the witnesses. The Appeals Board gives deference to that evaluation of credibility and in so doing affirms the decision of the Administrative Law Judge.

WHEREFORE, the Appeals Board finds the Order by Administrative Law Judge John D. Clark dated December 2, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Kim R. Martens, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director